

Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2024 – Australia

Anna Moskal (Monash University) · Thursday, January 2nd, 2025

This blog post provides a brief overview of some of the most important developments in Australian competition law and policy in 2024. It has been another busy year for the Australian Competition and Consumer Commission (ACCC), particularly in the areas of mergers, digital platform markets, supermarkets, and sustainability. Notably, this year also marks the 50th anniversary of the Trade Practices Act 1974, which remains the foundation for today's competition and consumer law in Australia.

Key developments in competition law and policy discussed in this post include:

- Merger reform
- Digital platforms competition reform proposal
- Two new Digital Platform Services Inquiry reports
- Epic Games' Federal Court action against Apple and Google
- ACCC's Supermarkets Inquiry and separate proceedings against Woolworths and Coles
- ACCC's sustainability guide

Merger reform

On 28 November 2024, the Australian Parliament passed the [Treasury Laws Amendment \(Mergers and Acquisitions Reform\) Bill 2024](#). This legislation marks a significant shift from Australia's current judicial enforcement model to a mandatory and suspensory administrative merger clearance regime, with the ACCC as the first instance decision maker for all notified mergers and acquisitions.

The new merger clearance regime will be mandatory from 1 January 2026, although parties can voluntarily seek clearance under the new system from 1 July 2025. The new merger regime is designed to better identify and prevent mergers that are most likely to harm competition and consumers, with the ACCC estimating that approximately 80% of mergers will be cleared within 15 to 20 business days.

The reforms aim to provide businesses with a more efficient and predictable merger process, clear notification requirements, greater transparency, and faster timelines. The new merger regime will also benefit the wider community by ensuring that transactions that could negatively impact

competition undergo thorough, risk-based scrutiny.

In anticipation of this new regime, the ACCC has published a [statement of goals](#) to outline its implementation approach and reduce uncertainty during the transition. The ACCC also plans to consult on and publish guidelines on the transition period.

Overall, the merger reforms represent a major change for the ACCC, business and the Australian community. For more information on these reforms, please refer to this [blog post](#).

Digital platforms competition reform proposal

The end of 2024 also saw long-awaited and significant changes proposed for the regulation of big tech companies in Australia. On 2 December 2024, the Treasury published a [proposal paper](#) on a new digital competition regime in Australia. The proposed regime aims to promote competition in digital platform markets by imposing upfront ‘ex ante’ rules to address conduct that is anti-competitive, creates barriers to entry, or exploits the market power of certain digital platforms. These requirements will complement the enforcement of existing competition law.

The ACCC, which has examined competition and consumer issues regarding digital platforms in Australia since 2017 and highlighted concerns about digital markets in the 5-year [Digital Platform Services Inquiry](#), has worked closely with the Treasury to develop the proposed framework. Notably, the proposed regime is similar in principle to reforms already being implemented or proposed in many international jurisdictions, including the European Union, the United Kingdom, Japan, India, Germany, and Brazil.

If the proposed regime is introduced, large platforms that are of significance to Australian consumers and the economy and that pose the greatest risk of competition harms will be designated by the minister in respect of specific services, based on an ACCC designation investigation. Once designated, a platform must comply with obligations for the relevant services, including both broad and service-specific obligations. The government proposes to prioritise app marketplaces and ad tech services as the first services to be investigated for designation under the framework – with the potential to expand to more services in the future.

The ACCC will be responsible for overseeing compliance, investigating breaches, and imposing penalties when necessary. Proposed penalties will align with the maximum financial penalties under the Competition and Consumer Act: \$50 million, three times the value of the benefit obtained, or 30 per cent of adjusted turnover during the breach period.

The Treasury is currently consulting on the proposed digital competition regime. Interested parties are invited to submit responses up until 14 February 2025. More information on the proposed regime is available on the [Treasury’s website](#).

Two new Digital Platform Services Inquiry reports

In 2024, the ACCC released two new interim reports in the [Digital Platform Services Inquiry \(DPSI\)](#). For context, the Australian Government directed the ACCC in 2020 to investigate markets

for the supply of digital platform services. Under this directive, the ACCC must provide the Treasurer with an interim report every 6 months until the inquiry concludes with a [final tenth report](#), which is scheduled to be provided to the Government by 31 March 2025.

ACCC's eighth interim DPSI report

On 21 May 2024, the ACCC released the [eighth interim DPSI report](#) on potential competition and consumer issues in the supply of data products and services by data firms in Australia. Data firms collect consumer data from a range of online and offline sources and use it to create and sell data services (e.g. data-driven marketing services, identity verification services) to business customers across many industries. In many cases, data firms do not have a direct relationship with the consumers whose data may be used.

In this report, the ACCC finds that consumers lack visibility and choice over how their data is collected, used and shared with data firms and other businesses. The report notes that long and complex privacy policies that use ambiguous language or 'take-it-or-leave-it' terms make it difficult for consumers to understand, intentionally consent to and control what happens to their data. The report also observes that data collection practices do not align with consumer expectations, based on a 2023 consumer study that found that 74% of Australians are uncomfortable with their personal information being shared with or sold to other companies.

The ACCC also highlights the potential identification and targeting of vulnerable consumers when consumers are categorised into groups to enable businesses to identify potential customers. For example, a consumer segment that identifies people as 'frequent gamblers' may be used to advertise gambling products to people who have a gambling addiction.

Additionally, the ACCC notes that data firms have potential incentives to harm competition by placing contractual obligations in agreements with business customers or data suppliers that limit a competitor's access to data.

Finally, the report also observes that mergers and acquisitions by data firms are frequent. These mergers are often a tool used to broaden the portfolio of a data firm's products and services, but can provide the acquirer with the ability to restrict access to important datasets.

ACCC's ninth interim DPSI report

On 4 December 2024, the ACCC released its [ninth interim DPSI report](#) revisiting general search services. This report builds on the third interim DPSI report on search defaults and choice screens. It considers whether recent changes impact the ACCC's previous recommendations, based on the findings of the ninth report, they do not.

The ACCC found that Google continues to dominate the general search market, with little substantive change to its market share or to its commercial arrangements that advantage Google Search as the default on most Australian devices.

Here are some key insights from the report regarding Google and its competitors:

- As of August 2024, Google holds nearly 94% of the search engine market share in Australia, while its closest competitor, Bing, commands less than 5%. Other competitors have not significantly gained market share, and new entrants have seen limited success in attracting users.
- Google remains the default search engine across most browsers due to its commercial preinstallation and default arrangements with third parties (looking at you, Apple!), as well as its ownership of the Chrome browser.
- In August 2024, Google Search was the default search engine for over 91% of mobile browsers and 77% of desktop browsers in Australia.

Additionally, Section 2 of the report delves into generative AI and its relationship with general search (see pp. 29-49). The ACCC notes that both new entrants and established digital platforms are integrating generative search functions or AI capabilities into their services. Google and Microsoft, due to their involvement at multiple levels of the generative AI supply chain and their established positions in the search market, are well-positioned to enhance their search offerings with generative AI.

While the report does not make any new recommendations, it highlights the continued need for regulatory reform to address digital platform-related competition and consumer harms, as recommended in the September 2022 interim DPSI report.

Epic Games' Federal Court action against Apple and Google

From March to July 2024, the Federal Court of Australia in Melbourne held a 16-week trial in which Epic Games and class action lawyers representing 150,00 app developers and 15 million consumers accused Apple and Google of engaging in anti-competitive conduct and misusing their market power in the operation of their app stores and in-app payment systems. They asserted that Apple and Google are stifling competition by effectively prohibiting alternative app stores on their devices and mandating the use of their payment platforms, which impose fees ranging from 15% to 30%.

Key issues in the trial included security concerns and the legitimacy of restrictions imposed on developers. Epic Games claimed that Apple exploits its closed iOS to limit competition under the guise of security, while Apple contended that these measures are essential for user safety. Epic also argued that Google exploits its dominance in the Android market to enforce restrictive contracts on developers, inhibiting competition. The trial further examined nuances related to Google's 'Project Hug', which allegedly incentivises select developers to remain within its Play Store ecosystem, thereby stifling competition.

The trial additionally involved debate over market definitions, with Epic aiming to include app distribution and in-app payments, while Apple and Google proposed narrower definitions.

Judge Jonathan Beach is expected to deliver a verdict in 2025, which will determine whether Google and Apple have abused their market power in app store operations.

The Australian trial is linked to ongoing litigation by Epic against Google in the US and UK, as well as an antitrust complaint against Apple in the EU.

ACCC's Supermarkets Inquiry and separate proceedings against Woolworths and Coles

Shifting focus from digital markets, another significant topic of interest in Australian competition policy and law in 2024 is supermarkets—arguably the most discussed cost-of-living issue in both the media and Australian households. However, the number of supermarkets discussed in Australia is essentially limited to two: Coles and Woolworths (or, as Australians call it, ‘Woolies’).

ACCC's Supermarkets Inquiry

On 25 January 2024, the Australian Government directed the ACCC to conduct an [inquiry](#) into Australia's supermarket sector. This inquiry examines the pricing practices of the supermarkets and the relationship between wholesale, including farmgate, and retail prices.

Just a month later, the ACCC released an [issues paper](#) seeking views on the key topics it would consider in its supermarkets inquiry. Submissions from over 80 interested parties are available on the [ACCC's website](#). The ACCC also hosted a series of roundtables with farmers and wholesalers of fresh produce and their representative bodies between May and July 2024.

Many suppliers [raised concerns](#) about their reliance on major supermarkets as trading partners in supplying grocery products to Australian consumers. Suppliers have concerns about their trading relationships with the supermarkets, including the price they receive, their inability to negotiate, a lack of transparency in the process for weekly tenders to supply fresh fruit and vegetables, payments that suppliers are required or pressured to make (for example, for promotions), and concerns that the quality assessment and rejection process is used for purposes other than genuine quality issues.

Additionally, to better understand how consumers engage with supermarkets, the ACCC ran a [consumer survey](#) that received an impressive 21,481 responses – the highest number in ACCC history! This clearly underscores the importance of this issue for both Australian consumers and businesses.

In September 2024, the ACCC released its highly-anticipated [interim report](#) for the supermarkets inquiry, outlining the concerns raised by consumers, suppliers and other interested parties at the halfway point of the inquiry. The report reveals that Australia's supermarket industry at the retail level is an oligopoly, with Coles and Woolworths controlling a staggering 67% of national supermarket retail sales and providing broadly similar supermarket offerings. The ACCC's preliminary analysis suggests that while the third-largest supermarket, ALDI, carved out a 9% market share, it provides only a partial constraint on Coles and Woolworths.

In November 2024, the ACCC conducted public hearings involving senior executives of ALDI, Coles, Metcash, Woolworths, and other stakeholders. The public hearings helped to gain a more complete understanding of key issues in the retail grocery sector and its associated supply chains. The hearings considered issues including supermarket price-setting practices, retail competition, supermarket profitability and margins, as well as concerns raised in grocery supply chains. The supermarkets inquiry public hearings have finished, and transcripts are now available on [ACCC's website](#).

The ACCC will continue considering the examined issues and present its conclusions in the final

report of the inquiry, due to the Government no later than 28 February 2025.

Separate proceedings against Woolworths and Coles

Additionally, the ACCC has commenced [separate proceedings](#) in the Federal Court against Woolworths and Coles for allegedly breaching the Australian Consumer Law by misleading consumers through discount pricing claims on hundreds of common supermarket products.

The ACCC's allegations relate to products sold by each of Woolworths and Coles at regular long-term prices which remained the same, excluding short-term specials, for at least six months and in many cases for at least a year. The products were subject to price rises of at least 15% for brief periods, before being placed in Woolworths' 'Prices Dropped' promotion and Coles' 'Down Down' promotion, at prices lower than during the price spike but higher than, or equal to, the regular price pre-price spike.

The ACCC's investigation into the conduct, which is the subject of these proceedings, pre-dates the Supermarkets Inquiry. The ACCC is seeking declarations, penalties and costs orders for alleged breaches of ss 18 and 29 (1)(i) of the Australian Consumer Law; as well as orders that Coles and Woolworths each fund a charity to deliver meals to Australians in need.

On 11 December 2024, Justice O'Bryan held a combined case management hearing with the parties, urging them to identify sample products, factual situations, or categories pertinent to the trial's relevant issues. The trial is set for early 2025.

ACCC's sustainability guide

On 18 December 2024, the ACCC released its [final guide on sustainability collaborations and Australian competition law](#), with accompanying a [quick guide on business practices](#) and a [5-step checklist for businesses considering collaboration](#). The publication of the guides follows a few months of public consultations.

The guides are designed to increase businesses' understanding of where competition law risks are not likely to arise when collaborating to improve sustainability outcomes. They provide information on what exemptions are available for business collaborations and explain how ACCC authorisation may be available to facilitate these agreements even if there are potential competition concerns.

Specifically, ACCC authorisation provides a legal exemption from the competition provisions of the Competition and Consumer Act (CCA). Once authorisation is granted, businesses can implement their collaboration without the risk of the ACCC or third parties taking legal action against them for a breach of the competition provisions in the CCA.

The ACCC can take a broad range of public benefits into account as part of its assessment of an application for authorisation, including those that protect the environment and promote sustainability. These benefits could include, for example, reduced greenhouse gas emissions, benefits for biodiversity and water systems or waste reduction.

Notably, [Brookfield](#) serves as an example of the ACCC approving a proposed acquisition that is likely to substantially lessen competition due to the anticipated public benefits related to sustainability. Sustainability was also one of the reasons for the ACCC's interim authorisation of [ABA, banks and retailers to financially support Armaguard](#).

Sustainability is becoming an increasingly prominent priority in Australian competition law. Readers interested in sustainability might also be interested in revisiting the [blog post on Australia Greenwashing](#).

Conclusions

Please note that this is a non-exhaustive recollection of the most impactful reforms, inquiries, lawsuits and decisions shaping competition law and policy in Australia in 2024. For those who wish to read more, I can recommend exploring other noteworthy developments, including the ACCC's position on the proposed [Sigma Chemist Warehouse acquisition](#), the Australian Competition Tribunal's authorisation of [ANZ's proposed acquisition of Suncorp Bank](#), and the above-mentioned [Armaguard interim authorisation](#).

For those wondering what can be expected in Australian competition law and policy in Australia in 2025, I have only five words of advice: 'Follow merger and digital reforms'.

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